

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1900

**CONTINENTAL ILLINOIS NATIONAL BANK
AND TRUST COMPANY OF CHICAGO,**

Petitioner,

vs.

**STATE OF ILLINOIS ex rel. RICHARD K. LIGNOUL,
Commissioner of Banks and Trust Companies, State of Illinois,**

Respondent.

**On Petition For A Writ Of Certiorari To The United
States Court Of Appeals For The Seventh Circuit**

BRIEF FOR RESPONDENT IN OPPOSITION

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ARGUMENT

1. **CONTRARY TO THE ARGUMENTS OF CONTINENTAL, THIS CASE DOES NOT PRESENT NOVEL OR EVEN DIFFICULT QUESTIONS OF FEDERAL LAW WHICH WARRANT CONSIDERATION OF THIS COURT.**

This case merely involves the routine application of the simple definition of a "branch" found in 12 U.S.C. §36(f)

to the stipulated functions Continental's CBCTs perform. Section 36(f) provides:

"The term 'branch' as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business . . . at which deposits are received, or checks paid or money lent."

Clearly, machines at which bank customers can engage in the routine banking functions of depositing or withdrawing money, receiving money on credit, transferring money between accounts and paying indebtedness* are within the parameters of that definition.

Furthermore, the application of section 36(f) to these functions is accentuated by examining the comments of Representative McFadden who describes its scope as follows:

"Sec. 7(f) [36(f)] defines the term 'branch.' Any place outside or away from the main office, where the bank carries on its business of receiving deposits, paying checks, lending money, *or transacting any business carried on at the main office*, is a branch if it is legally established under the provisions of this Act." 68 Cong. Rec. 5816 (1927) (emphasis added)

Moreover, in the leading case involving 12 U.S.C. §36(f), *First National Bank in Plant City v. Dickinson*, 396 U.S. 122 (1969), this Court liberally construed that section at page 135:

* For a detailed description of the CBCTs, see the opinion of the District Court, 409 F.Supp. 1167 (N.D. Ill. 1975) (attached as Appendix B to Continental's Petition) and the Stipulation of Facts it relies on (attached as an Exhibit to the State's Motion for Summary Judgment in the District Court).

“Although the definition [in §36(f)] may not be a model of precision, in part due to its circular aspect, it defines the content of the term ‘branch’; by use of the word ‘include’ the definition suggests a calculated indefiniteness with respect to the outer limits of the term. However, the term ‘branch bank’ at the very least includes *any* place for receiving deposits or paying checks or lending money apart from the chartered premises; it may include more.” (Emphasis in text)

Thus, in ruling that Continental’s CBCTs were “branches” under 12 U.S.C. §36(f), the court below resolved an uncomplicated issue by simply applying a definitional statute. And, in a like fashion, so did the only other appellate court to consider the issue, *Independent Bankers Ass’n of America v. Smith*, 534 F.2d 921 (D.C. Cir. 1976) (“IBAA”).^{*} Neither court encountered any difficulty in reaching the conclusion that these CBCTs are branches.

2. THE ARGUMENTS OF CONTINENTAL ARE MORE APPROPRIATELY MADE TO CONGRESS.

Continental raises various policy arguments and considerations which they say require the examination and reversal of the Seventh Circuit’s opinion by this Court. However, regardless of whether the definition of a branch in section 36(f) is to be applied on a national level or on a state-by-state basis,^{**} the decision as to whether Congress

^{*} See also the District Court opinions listed in footnotes at pages 8-9 of Continental’s Petition.

^{**} Even assuming *arguendo* that Continental prevails on this claim and a state-by-state definition of “branch” under 12 U.S.C. §36(f) is used, the clear and explicit prohibition of branching found in Illinois law (Ill. Rev. Stat. 1975, Ch. 16½, §106) and the strict reliance on state law found in 12 U.S.C. §36(c) would still preclude them from prevailing in this matter.

should require capitalization of each CBCT, and should protect national banks from non-bank competition and should insure their "proper" place in our economy must be made by Congress and not this Court. In the absence of language amending the clear provisions upon which the decisions below and in *IBAA* were based, those decisions should stand.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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